HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 101 of 2005.
Reserved on: 24.7.2008.
Decided on: 28.7.2008

Accountant General (Audit), H.P. & another ..... Petitioners.

Versus

H.P. Government and others. .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioners: Mr.Sandeep Sharma, Assistant Solicitor General of India.

For respondents No.1 to 3: Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J.:

This is a civil writ petition filed by the petitioners under Article 226/227 of the Constitution of India against the judgment passed by the learned H.P. State Administrative Tribunal, dated 8.10.2004, vide which the application filed by respondent No.4 under Section 19 of the Administrative Tribunals Act was allowed and respondents No.1 to 3 were directed to pay interest at the rate of 9% on the amount of Rs.6,452/- from the date it became due till realization. Similarly, respondent No.4, i.e. the present petitioners (AG), was directed to pay interest on the delayed payment of Rs.14,847/- at the rate of 9% from the date it became due till realization.

Whether reporters of local newspapers may be allowed to see the judgment? Yes.

Before we start with the facts of the case, we may observe that the present dispute is in between the State of H.P. and Accountant General for payment of interest on the delayed payment of Rs.21,299/- in favour of respondent No.4 for which the Accountant General has come up in a writ petition against the order passed by the learned Tribunal, while the State of H.P. is strongly contesting the writ petition filed by the petitioners against the order passed by the learned Tribunal. It is clear that for a petty amount, two wings of the State are contesting the case and it is one of such litigation which could have been avoided to save the time of the parties as well that of the Court.

Briefly stated the facts of the case are that an application under Section 19 of the Administrative Tribunals Act (hereinafter referred to as the OA) was filed by respondent No.4 as against the petitioners and respondents No.1 to 3. Respondent No.4 prayed that a sum of Rs.21,299/- has been wrongly deducted from death-cum-retirement gratuity of the applicant, who is a retired Deputy Ranger of the State Government. The applicant alleged that this amount was deducted as pointed out by the audit without giving him show cause notice. It was alleged by him that during the audit and inspection of the DFO Office, Mandi for the year 1991-92, it was alleged in the audit that there was a loss of revenue to the extent of Rs.14,877/- including sales tax of Rs.3,202/- due to the alleged over size marking of trees in TD. The loss of revenue was attributed to the applicant and Divisional Forest Officer, Mandi, namely, respondent No.3. The applicant alleged that a reply was sought from him by respondent No.3 who was not satisfied with his reply and he was held liable for the loss of government revenue to the extent of Rs.21,299/- instead of Rs.14,847/-. The applicant made representations to the Government. The applicant was absolved of the charge causing revenue loss to the Government but respondent No.3 initiated recovery

proceedings against him and the applicant was not heard and he was made liable to pay this amount of Rs.21,299/- as penalty which was to be deducted from the amount of death-cum-retirement gratuity payable to the applicant. The applicant also prayed that no action was taken against other officials equally held responsible for the alleged wrong act of marking since disciplinary proceedings were initiated against them also but the amount was directed to be deducted from the death-cum-retirement gratuity of the applicant.

The applicant filed the OA praying that the order passed by the Accountant General and other respondents be quashed, which application was allowed by the learned Tribunal, but in so far as interest on this amount is concerned, both the parties, as detailed above, were directed to pay interest on part of the amount.

The submissions made by the learned Assistant Solicitor General of India were that in view of the audit note, this sum was found payable by respondent No.4 and accordingly the recovery was directed to be made. In the reply filed by the petitioners before the learned Tribunal, they had taken the plea that the said recovery was effected by respondent No.3 i.e. DFO, Mandi of his own, though no such orders were passed by the petitioners. They also pleaded that audit paras were settled by the respondents on receipt of reply to the audit objections. Therefore, the petitioners were not liable to pay interest, if any, as claimed by the applicant.

It is a dispute only as to who was responsible for the delayed payment in favour of respondent No.4. The petitioners were within their right to mention in the audit if anything was found due and that audit para had to be settled by the State Government with the A.G. and accordingly, the amount was to be payable in case it was held that respondent No.4 was entitled to the amount. It

is a question of fact as to when the audit para was made, when the reference was made to the State Government and finally when the audit para was settled and if there was any delay, it was due to the fault on the part of the petitioners or respondents No.1 to 3. All these questions are of fact, which were required to be considered by the learned Tribunal and accordingly the learned Tribunal had given its findings apportioning the amount of interest payable by both these parties. The findings of fact leading to the passing of the impugned order are not to be reconsidered by this Court exercising the writ jurisdiction and the findings of fact which were recorded by the learned Tribunal have to be accepted as correct and accordingly the interest has to be apportioned in between both the parties, as directed by the learned Tribunal. There is nothing on record to show that the said order passed by the learned Tribunal suffers from any illegality and while exercising the writ jurisdiction, this Court cannot, as an Appellate Court, reconsider the facts or the dates when the audit para was sent or objection was raised or how there was delay and who is responsible for the same.

In view of the above discussion, it follows that the impugned order passed by the learned Tribunal does not call for an interference by this Court while exercising the writ jurisdiction and as such there is no merit in the writ petition filed by the petitioners, which is dismissed accordingly. The amount in question already stands paid and the interest, if it has not been paid, shall be paid within four weeks from today to respondent No.4. The

writ petition stands disposed of accordingly.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

July 28, 2008. (TILAK)